that section that the extension order under that section must commence *immediately upon the expiration* of the period of the current order.

Both the extension orders we are concerned with in the appeals in effect reproduced the language of s 11A(1) of the Act. In Bahasa Malaysia, each of the extension orders reads as regard to period of extension as follows: 'selama tempoh dua (2) tahun selanjutnya mulai dari tarikh tamat tempoh perintah tahanan itu'. However, immediately after those words, on the commencement there appeared the words 'iaitu dari 4 haribulan Mei 1989' (in the case of Criminal Appeal No 05-128-89) and 'iaitu dari 13 haribulan Mei 1989' (in the case of Criminal Appeal No 05-129-89).

The dates referred to in both the orders were actually the dates of the expiry of the current detention orders. At the stroke of midnight on 4 May 1989 (in the case of Criminal Appeal No 05-128-89) and 13 May 1989 (in the case of Criminal Appeal No 05-129-89), the period of the current detention orders ended and the period of the extension orders commenced.

Taken as a whole, our view is that the extension orders have in fact substantially complied with s 11A of the Act. The additional words which referred to specifying the dates cannot be regarded as rendering the extension orders invalid.

The learned judge was quite correct in applying the maxim de minimis non curat lex (the court should not deal in trivialities). Looking at the problem in another way, it is not so much the application of the de minimis rule but that the extension orders in question should be read as a whole and the words specifying the dates referred to earlier should be ignored either as a genuine mistake or a miscalculation of the dates or a trifling irregularity or simply superfluous — see also *Greene* v *Secretary of State for Home Affairs*[2] at pp 298-300. The appeals were accordingly dismissed.

Appeals dismissed.

Solicitors: *Karpal Singh & Co.*

Reported by *Prof Ahmad Ibrahim*

Ker Chee Chuan v Katlyn Enterprise (M) Sdn Bhd

HIGH COURT (MUAR) — ORIGINATING MOTION NO 25-7 OF 1989
RICHARD TALALLA JC
22 FEBRUARY 1990

Land Law — Caveat — Private caveat entered by respondent — Land registered in respondent's name — Public auction of land — Order to compel delivery of title — Dispute on land ownership — Allegation by respondent of irregularities of service of writ and auction sale — Application to set aside auction sale — Principles governing removal of caveat — Whether serious question to be tried — Balance of convenience — Whether applicant bona fide purchaser

The applicant is seeking an order that a private caveat entered by the respondent against the land held under Grant No 10726 for lot no 1379, mukim of Simpang Kanan, District of Batu Pahat ('the land'), be removed. The applicant bought the land at a public auction for $200,500 pursuant to an order of court. The respondent claimed that it was at all material times the registered proprietor of the land having bought the land from one Suppiah ('Suppiah'), and had paid him in full for the land. Suppiah commenced an action against the respondent claiming a sum of $129,408 which he alleged to be the balance due in respect of the sale of the land by him to the respondent. Judgment in default of appearance was obtained and thereafter Suppiah proceeded to obtain execution of the judgment which resulted in the sale by public auction at which the applicant was the successful bidder. The respondent applied to set aside the auction sale and alleged that there were irregularities in the service of the writ, the execution proceedings and that the provisions of the National Land Code 1965 and the Rules of High Court 1980 had been breached. The applicant claimed to be a bona fide purchaser for value without notice.

Held, dismissing the application:

(1) The law in relation to an application for an order for removal of a caveat such as the present application is well settled. The respondent caveator must first satisfy the court that on the evidence presented to the court, his claim to an interest in the property does raise a serious question to be tried and, having done so, he must go on to show that on the balance of convenience it would be better to maintain the status quo until the trial of the action, by preventing the caveatee from disposing of his land to some third party. The court found that the respondent has discharged the onus placed on it to establish that the caveat should remain pending disposal of the main issue, viz who is the true and rightful owner of the land in question.

(2) There should be a trial to ascertain whether or not the respondent paid Suppiah for the land. It also has to be judicially determined whether the writ in Suppiah's case was duly served on the respondent and whether the applicant was a bona fide purchaser under s 340 of the National Land Code 1965.

[*Editorial Note*: The applicant has appealed to the Supreme Court vide Civil Appeal No 02-128 of 1990.]

Cases referred to

1 *Eng Mee Yong & Ors* v *V Letchumanan* [1979] 2 MLJ 212 (folld)
2 *Chin Cheng Hong* v *Hameed & Ors* [1954] MLJ 169 (refd)
3 *Mahadevan & Anor* v *Patel* [1975] 2 MLJ 207 (refd)

Legislation referred to
National Land Code 1965 s 340
Rules of the High Court 1980 O 31, O 47

C Subbayah for the applicant.
RM Nathan for the respondent.

Cur Adv Vult

Richard Talalla JC: The applicant ('Ker') is seeking an order that a private caveat entered by the respondent ('Katlyn') against the land ('the land') held under Grant no 10726 for lot no 1379 situated in the mukim of Simpang Kanan, District of Batu Pahat in the state of Johore be removed.

Ker had bought the land at a public auction conducted under the supervision of this court. On 3 August 1988, the learned senior assistant registrar exercising the powers under O 47 of the Rules of the High Court 1980 certified that the land had been sold to Ker for $200,500 pursuant to an order of court dated 12 June 1988 under O 31 of the said Rules.

Katlyn claimed that it was at all material times the registered proprietor of the land having bought the land from one Mr Suppiah ('Suppiah'). Katlyn claimed to have paid Suppiah in full for the land and there is affidavit evidence adduced in these proceedings showing such payment. Notwithstanding that evidence, on 15 August 1987 in Muar High Court Civil Suit No 23-42 of 1987, Suppiah commenced an action against Katlyn claiming a sum of $129,408 which he alleged to be the balance due in respect of the sale of the land by him to Katlyn. The writ in that suit is said to have been served on Katlyn at its registered office. Katlyn denies such service and again there is affidavit evidence which prima facie points to the writ not having been duly served. Katlyn did not appear to the writ. In the event, Suppiah obtained a judgment in default of appearance and thereafter proceeded to obtain execution of the judgment which resulted in the sale by public auction at which Ker was the successful bidder. Katlyn claimed that there were a number of irregularities in the execution proceedings following Suppiah's judgment and that the provisions of the National Land Code 1965 and the Rules of the High Court 1980 had been repeatedly and blatantly flouted.

Armed with the learned registrar's certificate of sale, Ker proceeded to seek registration of himself as the proprietor of the land which was registered in the name of Katlyn. The Registrar of Titles on 1 October 1988 issued a notice under s 15 of the National Land Code 1965 to Mr Low King Wing, a director of Katlyn, requiring him to produce the document of title. The issue document of title ('title') to the land was with Katlyn's solicitors. The title was not forthcoming. So Ker engaged Suppiah's solicitors to help him obtain the title. On 11 October 1988, in Originating Summons No 31-423 of 1988, Ker through his solicitors applied for an order that Mr Low King Wing and Katlyn deliver the title to him Ker or his solicitors. The originating summons too appeared to have been irregularly served. On 16 November 1988, not surprisingly in the absence of Mr Low and Katlyn, Ker obtained an order in terms of the originating summons.

Meanwhile Katlyn, having got wind of what was on foot, possibly as a result of receiving the notice from the Registrar of Titles, instructed their solicitors who on 25 October 1988 wrote to the solicitors acting for Suppiah and Ker asking for the pleadings and cause papers in Civil Suit No 23-42 of 1987. Apparently there was no reply to this letter but on 22 November 1988, Ker's solicitors wrote to Katlyn's solicitors enclosing a sealed copy of the order of court dated 16 November 1988 and requesting delivery of the title deed within 48 hours and also inviting their co-operation in order to avoid committal proceedings, so they say. Katlyn's solicitors replied on 23 November saying that they wished to defer the delivery of the title deed as they had applied in the original civil suit to set aside the sale pursuant to the prohibitory order, and hoping that Ker's solicitors would have no objection to their keeping the title on their understanding to abide further orders of the court consequent upon their application. Ker's solicitors were adamant. By letter dated 24 November 1988, they informed Katlyn's solicitors that Ker firmly objected to their keeping the title deed. They demanded delivery within 48 hours under pain of applying for committal proceedings against Katlyn's solicitors. They also threatened that Ker would hold them, Katlyn's solicitors, responsible for all loss and damages suffered by him due to non-compliance by Katlyn's solicitors of the order of court. Katlyn's solicitors succumbed and by letter dated 26 November 1988 sent the title deed to Ker's solicitors.

The law in relation to an application for an order for removal of caveat such as the present application is well settled. The leading authority appears to be the Privy Council case of *Eng Mee Yong & Ors* v *V Letchumanan*[1] where it is stated at p 215 that in an application such as the present, the respondent caveator must first satisfy the court that on the evidence presented to the court, his claim to an interest in the property does raise a serious question to be tried and, having done so, he must go on to show that on the balance of convenience, it would be better to maintain the status quo until the trial of the action, by preventing the caveatee from disposing of his land to some third party.

The principle under which the system of caveats is founded as stated in the case of *Chin Cheng Hong* v *Hameed & Ors*[2] at p 170 and the Supreme Court case of *Mahadevan & Anor* v *Patel*[3] at p 208 is that they exist for the protection of alleged as well as proved interests and that it is not only a person who has a right to a registrable interest

in land that may enter a caveat against the land but also any person claiming title to or any registrable interest in any alienated land or even claiming only a right to such title or registrable interest, who may enter a caveat.

As I see it, Katlyn has discharged the onus placed on it to establish that the caveat should remain pending disposal of the main issue, namely, who is the true and rightful owner of the land in question. As I see it, there should be a trial to ascertain whether or not Katlyn paid Suppiah for the land. It also has to be judicially determined whether the writ in Suppiah's case was duly served on Katlyn. If the writ was not duly served, it would seem that all proceedings in the suit subsequent to the issue of the writ are open to question and liable to be set aside.

Ker claims to be a purchaser of the land in good faith and for valuable consideration and invokes the provisions of s 340 of the Code. At this stage I do not know whether he is such a purchaser. The court record discloses that the auction was held on 14 July 1988 when Ker paid the auctioneer a sum of $20,050 being 10% of the purchase price, as he was required to under the memorandum of contract he executed consequent upon having successfully bid at the auction. He paid the balance purchase price of $180,450 on 23 July 1988 although under the contract he had one month within which to pay the same. The registrar's certificate of sale was issued to Ker on 3 August 1988. On 22 September 1988, there was deducted from the purchase price a sum of $2,050 being the court's commission and a further sum of $1,510 being the auctioneer's charges leaving a balance sum of $196,985 which was paid to Suppiah's solicitors on 27 September 1988. It is not known whether the solicitors have paid Suppiah or retained the money pending determination of all the matters raised by Katlyn. It is not known when exactly Ker consulted his solicitors. The court record in Originating Summons No 31-423 of 1988 discloses a letter dated 6 October 1988 to our senior assistant registrar enclosing the originating summons wherein Ker sought an order for delivery of the title to him. A period of over two months had lapsed since the issue of the certificate of sale. How is it that Ker paid the balance purchase price so promptly and yet allowed more than two months to pass before taking court action to obtain the title? Did he deliberately wait for the purchase price to be paid to Suppiah's solicitors and if so why? Is it more than a coincidence that his lawyers and Suppiah's were the same? Katlyn had no inkling of Suppiah's action, right up to the completed auction sale. Yet there was no difficulty in getting them to produce the title. Was Katlyn deliberately kept in the dark until everything was over and their land well and truly sold? Truly sold? If so, did Ker have notice of this or was he innocent of the whole thing? Should he have taken earlier steps to obtain registration of the title in his name and on discovering that Katlyn was objecting, at once alerted the registrar and stopped payment to Suppiah? I do not know. What I know is that many questions need to be asked and indeed answered. It seems to me there should be a trial in this regard.

Accordingly, the application for removal of the caveat must be and is hereby dismissed with costs to be taxed.

Application dismissed.

Solicitors: *C Subbayah & Associates; Leng & Co.*

Reported by *Wong Kim Fatt*

Lee Chee & Ors v Allen & Gledhill

HIGH COURT (KUALA LUMPUR) — ORIGINATING SUMMONS NO S6-24-468-89
LIM BENG CHOON J
22 JANUARY 1990

Legal Profession — Letter of undertaking — Breach of — Whether court has jurisdiction to entertain application for solicitors' alleged breach of undertaking

The plaintiffs entered into joint-venture agreements with the defendants' clients to develop certain lands of which the plaintiffs were registered owners. The plaintiffs deposited documents of title to the lands with the defendants, on receipt of which the defendants gave a letter of undertaking to the solicitors for the plaintiffs. The letter of undertaking was dated 7 August 1985 and contained an undertaking by the defendants to furnish the plaintiffs with performance guarantees in connection with the joint-venture agreements, failing which the documents of title to the lands were to be returned. No bank performance guarantee was furnished and the documents of title were not returned to the plaintiffs. A search carried out by the defendants showed that the lands had been transferred to the developers before the letter of undertaking had been given by the defendants and that the lands had been charged by the developers to secure a loan. The defendants alleged that the plaintiffs had by their actions disabled themselves from returning to the plaintiffs the document of title. The plaintiffs commenced an action seeking a declaration that the defendants were in breach of the letter of undertaking dated 7 August 1985. It was argued for the defendants that the proceedings constituted by the plaintiffs were improper because:

(a) The court had no jurisdiction over advocates and solicitors in the States of Malaya as advocates and solicitors are not officers of the court whereas in England solicitors are officers of the court as provided in s 50 of the Solicitors Act 1957 of England.

(b) There was no such similar provisions in the Legal Profession Act 1976. The High Court in England exercise supervisory control over solicitors in relation to their role as solicitors on account of the fact that solicitors are officers of the court in England.

(c) In the States of Malaya, the professional conduct of advocates and solicitors are under the supervisory control of the Bar Council having regard to the provisions of the Legal Profession Act 1976.